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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,953	08/03/2001	Ahmad Akashe	67291	8389

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FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/921,953	AKASHE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Helen F. Pratt	1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 4 is objected to because of the following informalities: no percentage sign is seen on line 2 of claim 4 after "about 1 to about 5%". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viteri et al. (XP-0011062784) in view of Humbert (5,667,825) and Henry et al. (6,509,045)

Viteri et al. disclose a beverage composition of fruit juice (potable liquid), coffee and tea, containing sugar fortified with ferric EDTA (FE) (page 1154, col. 1, last para. and col. 2, 1<sup>st</sup> par.). Juices are seen to containing natural flavorings as are coffee and tea. Humbert discloses as prior art in col. 2, that it is known to use FE in a fish sauce (col. 2, lines 12-22). Certainly, a fish sauce is flavored with the flavor of fish. Henry et al. '045 disclose a beverage composition that contains ferric ions and EDTA as a complexing agent to prevent off-colors caused by fortification with Iron ( abstract and col. 4, lines 14-20, col. 10, lines 44-65 and col. 11, lines 1 and 2). Nothing is seen that ferric iron is not chelated with EDTA to make ferric EDTA. Claims 1 and 2 differ from the reference in the use of an amount of liquid effective to dissolve the FE. However, no problems were mentioned as to the FE not being dissolved in the beverages (page 1156, col. 2). Certainly, it is known that sugar dissolves well in water. Therefore, it

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would have been obvious to make a composition as shown by Viteri et al. containing the claimed composition as shown by the reference to Viteri et al.

Claims 3 and 4 require particular amounts of FE . Henry et al. disclose the use of 5-100% of the RDA in the form of chelated iron because the EDTA is considered to chelate with the available iron (col. 3, lines 33-40). The iron is considered to be chelated because is complexed with EDTA (col. 10, lines 44-50, and col. 1-2) and in Viteri et al. within the claimed amount (page 1162, col. 2, lines 1<sup>st</sup> incomplete para.). Therefore, it would have been obvious to add particular amounts of FE to a beverage composition.

Claim 5 requires potable water, claim 6 a protein, claim 7 that the beverage is liquid and claim 8 that it is frozen. All the references have some liquids such as water or milk in them, (Henry,col. 12, lines 59-70), as in claim 5, milk contains protein as in claim 6, and is liquid as in claim 7. Nothing new is seen in freezing beverages, particularly if they contain the same composition as the beverage, as this is just a change in form. Therefore, it would have been obvious to make compositions as above, and to treat the compositions as above.

Fruit beverages as in the reference to Viteri et al. disclose the use of sugar added juices as in claim 9 (page 1154, col. to 1<sup>st</sup> para.). Fruit beverages are commonly made from concentrates, as in every day orange juice. Also, the addition of vit. C as in claim 10 is well known, particularly as citrus containing beverages inherently contain vit. C . Henry et al. disclose the use of vitamin C in an iron fortified beverage (col. 7,lines 45-52) and Henry et al. disclose that the addition of ascorbic acid (vit. C) is important to

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use in compositions containing iron to prevent off-color development (col. 10, lines 44-55). Therefore, it would have been obvious to use a known vitamin in the claimed composition as a fortificant or to prevent off-colors as shown above.

Claim 11 further requires particular amounts of a flavoring ingredient, and sweeteners and water in particular amounts. Henry discloses the use of from 0.01% to 10% flavoring. The particular amounts as to the various ingredients are also within the skill of the ordinary worker. The discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing a beverage product, properties such as fortification and taste of the beverage are important. It appears that the precise ingredients as well as their proportions affect the degree of fortification taste of the product, and thus are result effective variables, which one of ordinary skill in the art would routinely optimize. Therefore, it would have been obvious to use particular amounts of ingredients to make the claimed product.

The limitations of claims 12 and 13 has been discussed above and are obvious for those reasons.

Claim 14 requires particular amounts of a preservative and claim 15 requires that it is an acid and claim 16 requires a powdered mixture containing the claimed composition with a stabilizer which can be cellulose as in claim 17. Henry et al. disclose the use of acids as in claims 14 and 15 which are known to act as preservatives by lowering the pH of the composition. The particular amounts of from 8 to 20% is above the claimed amount. The acids are acting in a dual capacity as part of the flavor system

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and inherently as an acidifier, which causes preservation of the beverage (col. 9, lines 23-35). Nothing is seen that this is not the case. Carboxymethylcellulose is disclosed in col. 10, lines 3-18 as in claim 17. Therefore, it would have been obvious to use known ingredients as disclosed above to make the claimed beverage.

Claim 16 requires that the product is a soluble powdered beverage mixture. Henry et al. disclose a dry beverage mix containing the claimed ingredients (col. 9, lines 60-68 and col. 10, lines 1-18). The further limitations of the claims have been disclosed above. Therefore, it would have been obvious to make a beverage as shown by the above combination of references.

Vitamin/mineral blends with citric acid are disclosed in col. 15, lines 25-45 (Henry et al.) Therefore, it would have been obvious to use the claimed composition in a beverage as shown by the reference to Henry et al.

The composition of claim 19 has been shown above. The particular amounts are seen as within the skill of the ordinary worker. See In re Boesch above. Therefore, it would have been obvious to use various amounts of ingredients in the claimed composition.

The particular amounts of the FE as in claim 20 have been disclosed above, or are seen as being within the skill of the ordinary worker, particular as to the references to Viteri et al. and Humbert as these are to the fortification of beverages, in particularly. Therefore, it would have been obvious to fortify in the claimed amounts to achieve the desired fortification.

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Sweeteners such as sucrose, vitamins and minerals and flavoring agents as in claims 21-22 are disclosed in col. 17, lines 10-20, col. 18, lines 40-55 in Henry et al. Therefore, it would have been obvious to use known ingredients to make the claimed composition.


Claims 23, 25-26 is to a method of preventing iron-deficiency anemia in mammals by administering the claimed beverage composition, which has been disclosed above. All the references are to preventing anemia (abstracts and (Henry, col. 1, lines 25-65). As the amount of iron required to prevent anemia is well known, it would have been obvious to use an amount to prevent the anemia. Therefore, it would have been obvious to treat anemia as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 8-28-03

  
HELEN PRATT  
PRIMARY EXAMINER